Blank Page

Office - Supreme Court, U. S.
FILED
OCT 11 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term 1940

No. 66

WILLIAM B. MILLIKEN, MARGARET M. MILLIKEN, TEXAS PRODUCTION COMPANY, a Corporation, and THE OHIO OIL COMPANY, a Corporation,

PETITIONERS,

vs.

VIOLET L. MEYER, Both Individually and as Administratrix with the Will Annexed of the Estate of Raymond D. Meyer, Deceased, RESPONDENT.

BRIEF OF PETITIONERS.

JEAN S. BREITENSTEIN,
JOHN G. REID,
718 Symes Bldg., Denver, Colo.,
Attorneys for Petitioners William B. Milliken and Margaret M. Milliken.

HAROLD H. HEALY,
Casper, Wyoming,
Attorney for Petitioner The Ohio Oil Company.

EDWARD M. FREEMAN,
135 E. 42nd St. New York, N. Y.

Y. A. LAND,
University Bldg., Denver, Colo.
Attorneys for Petitioner Texas Production Company.

ank Page

SUBJECT INDEX.

	PAGE
Opinions of Court Below	1
Jurisdiction	2
Statement of Facts	2
Specification of Points to be Urged	12
Summary of the Argument	12
Argument	13
I. Full Faith and Credit Must be Given Valid and Subsisting Judgments of Courts of one State by Courts of Other States	13
II. The Wyoming Court had Jurisdiction	15
a. Objections raised to Jurisdiction	15
b. The judgment debtor had his domicile in Wyoming	15
c. The Wyoming statutes authorize extra-territorial service of process on residents of the state in actions in personam	17
d. A judgment in personam based upon the extraterritorial service of process upon an individual domiciled within the state of the court rendering the judgment is valid	19
III. The Wyoming Judgment May Not be Denied Full Faith and Credit Because of Alleged Errors and Irregularities not Concerning the Jurisdiction of the Court	25
a. Jurisdiction having attached, a judgment may not be impeached by a mere showing of errors and irregularities	25
b. The nature of the alleged errors and irregularities	27

SUBJECT INDEX (Continued).

PAGE

c. A judgment may not be impeached in a collateral attack because of errors and irregularities not affecting the jurisdiction of the court 29

Conclusion 30

Appendix A. (Pertinent provisions of statutes of Wyoming relating to service of summons) 32

Appendix B. (Wyoming statutes relating to vacation, modification or correction of judgments and decrees and the time within which such proceedings must be taken) 35

CASE INDEX.

PAGES

Adam v. Saenger, 303 U. S. 59, 62, 58 S. Ct. 454, 456 ..... 14, 15

Baltimore S. S. Co. v. Phillips, 274 U. S. 316, 325, 47 S. Ct. 600, 604 29

Becker v. Becker, 218 S. W. 542 (Texas Civil Appeals) 20

Bickerdike v. Allen, 157 Ill. 95, 41 N. E. 740 20

Blackmer v. U. S., 284 U. S. 421, 52 S. Ct. 252 23

Bradford v. Pugh, 13 Ark. 33 21

Bryant v. Shute's Exec., 147 Ky. 268, 144 S. W. 28 20

Chandler v. Peketz, 297 U. S. 609, 612, 56 S. Ct. 602, 604 30

Cole v. Hoeburg, 36 Kan. 263, 13 P. 275 21

Cooper v. Reynold's Lessee, 10 Wall. 308, 316, 19 L. Ed. 931, 932 ..... 24, 26

Cornett (Nash) v. Williams, 20 Wall. 226, 250, 22 L. Ed. 254, 258 26

De la Montanya v. De la Montanya, 112 Calif. 101, 44 P. 345 21

Dugas v. American Surety Company of New York, 300 U. S. 414, 425, 57 S. Ct. 515, 519 27

PAGES

Earle v. McVeigh, 1 Otto 503, 508, 23 L. Ed. 398, 400 ..... 22, 24
Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641 26
Grover and Baker S. M. Co. v. Radcliffe, 137 U. S. 287, 294, 11 S. Ct. 92, 94 ..... 14, 22
Harkness v. Hyde, 8 Otto 476, 25 L. Ed. 237 22
Harryman v. Roberts, 52 Md. 64 21
Henderson v. Staniford, 105 Mass. 504 20
Hess v. Pawloski, 274 U. S. 352, 47 S. Ct. 632 19
Honeyman v. Hanan, 302 U. S. 375, 378, 58 S. Ct. 273, 274 19
Hunt v. Hunt, 72 N. Y. 217, 239 20
Huntley v. Baker, 33 Hun. (N.Y.) 578, 580 20
Hurlburt v. Thomas, 55 Conn. 181 20
In re Hendrickson, 40 S. D. 211, 167 N. W. 172 20
Johnson v. Manhattan Ry. Co., 289 U. S. 479, 496, 53 S. Ct. 721, 727 29
Knowles v. Logansport Gas-Light & Coke Co., 19 Wall. 58, 22 L. Ed. 70 22
Lafayette Insurance Co. v. French, 18 How. 404, 407, 15 L. Ed. 451-452 19
McDonald v. Mabee, 243 U. S. 90, 91, 37 S. Ct. 343, 344 ..... 19, 21, 24
Marchand v. Frellsen, 15 Otto 423, 428, 26 L. Ed. 1057, 1059 29
Meyer v. Milliken, *et al.*, 101 Colo. 564, 76 P. (2d) 420 1
Meyer v. Milliken, *et al.*, 105 Colo. 532, 100 P. (2d) 151 1
Milliken *et al.* v. Meyer, 305 U. S. 598, 59 S. Ct. 63 10
Milliken *et al.* v. Meyer, etc., 60 S. Ct. 1099 (Advance Sheets June 15, 1940) 2
Moss v. Fitch, 212 Mo. 484, 111 S. W. 475 21
Murrell v. Stock Growers Nat. Bank, 74 F. (2d) 827, 833 (C.C.A. 10) 29

CASE INDEX (Continued).

PAGES

Mutual Reserve Fund Life Assoc. v. Phelps, 190 U. S. 147, 23 S. Ct. 707 19
Northern Aluminum Co. v. Law, 157 Md. 641, 147 At. 715 21
Ory v. Bosio, 178 La. 221, 151 So. 187 20
Osaka Shosen Kaisha Line v. U. S., 300 U. S. 98, 101, 57 S. Ct. 356, 357 18
Owens v. Battenfield, 33 F. (2d) 753, 757 (C.C.A. 8) 29
Pennoyer v. Neff, 5 Otto 714, 24 L. Ed. 565 21
Raher v. Raher, 150 Iowa 511, 129 N. W. 494 21
Reed v. Allen, 286 U. S. 191, 201, 52 S. Ct. 532, 534 27
Roberts v. Roberts, 135 Minn. 397, 161 N. W. 148 21
Roche v. McDonald, 275 U. S. 449, 451, 48 S. Ct. 142, 143 14
Rooker v. Fidelity Trust Co., 263 U. S. 413, 415, 44 S. Ct. 149, 150 26
Roller v. Holly, 176 U. S. 398, 405, 20 S. Ct. 410, 412 24
South Ottawa v. Perkins, 4 Otto 260, 271, 24 L. Ed. 154, 159 14
State of Washington v. Supreme Court, 289 U. S. 361, 364, 53 S. Ct. 624, 626 20
Sturgis v. Fay, 16 Ind. 429 21
Titus v. Wallick, 306 U. S. 282, 291, 59 S. Ct. 557, 562 14
U. S. v. California & Oregon Land Co., 192 U. S. 355, 358, 24 S. Ct. 266, 267 26
U. S. v. Moser, 266 U. S. 236, 242, 45 S. Ct. 66, 67 27
U. S. Throckmorton, 8 Otto 61, 65, 25 L. Ed. 93, 95 27
Webster v. Reid, 11 How. 437, 13 L. Ed. 761 22
Wuchter v. Pizzutti, 276 U. S. 13, 24, 48 S. Ct. 259, 262 ..... 19, 24

CONSTITUTIONAL PROVISIONS CITED.

Section 1, Article IV, United States Constitution 2, 6, 11, 12
Article I, Section 6, Wyoming Constitution 6
Article V, Section 10, Wyoming Constitution 15

Statutes Cited.

	Pages
Section 237, Judicial Code (28 USCA 344 b)	2
United States R. S. Sec. 905, (28 USCA 687)	14
Session Laws of Wyoming, 1921, Chapter 62	7, 15
Wyoming Compiled Statutes, 1920, Section 5609	34
Wyoming Compiled Statutes, 1920, Section 5610	34
Wyoming Compiled Statutes, 1920, Section 5611	34
Wyoming Compiled Statutes, 1920, Section 5636	3, 17, 32
Wyoming Compiled Statutes, 1920, Section 5641	3, 17, 34
Wyoming Compiled Statutes, 1920, Section 5923	35
Wyoming Compiled Statutes, 1920, Section 5926	35
Wyoming Compiled Statutes, 1920, Section 5927	35
Wyoming Compiled Statutes, 1920, Section 5932	36
Wyoming R. S. 1931, Section 89-817	3, 17, 32
Wyoming R. S. 1931, Section 89-819	18
Wyoming R. S. 1931, Section 89-822	3, 17, 34
Wyoming R. S. 1931, Section 89-2301	35
Wyoming R. S. 1931, Section 89-2304	35
Wyoming R. S. 1931, Section 89-2305	35
Wyoming R. S. 1931, Section 89-2310	36
Wyoming R. S. 1931, Section 91-113	7, 15

Texts Cited.

2 Black on Judgments (2nd Ed.) Sec. 907, p. 1349	21
Dodd, "Jurisdiction in Personal Actions", 23 Ill. Law Review 427	19, 20
Freeman on Judgments (5th Ed.) Sec. 1376, p. 2845	21
Restatement of the Law of Conflict of Laws, Sec. 47 and Sec. 79	20, 23
21 R.C.L. 1269, 1292	21
34 C. J. 1147	21
35 L.R.A. (N.S.) 297	21
126 A.L.R. 1474	21

Blank Page

IN THE

Supreme Court of the United States

October Term 1940

No. 66

WILLIAM B. MILLIKEN, MARGARET M. MILLIKEN, TEXAS PRODUCTION COMPANY, a Corporation, and THE OHIO OIL COMPANY, a Corporation,

PETITIONERS,

vs.

VIOLET L. MEYER, Both Individually and as Administratrix with the Will Annexed of the Estate of Raymond D. Meyer, Deceased, RESPONDENT.

BRIEF OF PETITIONERS.

OPINIONS OF COURT BELOW.

The first opinion of the Colorado Supreme Court is reported under the style of *Meyer v. Milliken et al.*, 101 Colo. 564, 76 P. (2d) 420 (see also R. 211-237). The second and last opinion of that court in this cause is reported under the same style in 105 Colo. 532, 100 P. (2d) 151 (see also R. 239-246).

JURISDICTION.

Jurisdiction is invoked under Section 237 of the Judicial Code (28 USCA 344 b). Certiorari was granted June 3, 1940 (see R. 256 and Advance Sheets 60 Supreme Court Reporter, June 15, 1940, p. 1099).

STATEMENT OF FACTS.

This action was brought by respondent Violet L. Meyer in the district court of the City and County of Denver, Colorado, to obtain equitable relief from a judgment of the district court of Carbon County, Wyoming, entered on July 11, 1931, against respondent's testate, R. D. Meyer, in an action wherein W. B. Milliken was plaintiff and Transcontinental Oil Company and R. D. Meyer were defendants. The complaint asserts (R. 55) that the Wyoming judgment is void because of a lack of jurisdiction over the person of the defendant R. D. Meyer, who allegedly was a resident of Colorado and was served in that state, and because of an alleged conflict between the findings of the court and the judgment in that the court found valid an agreement between W. B. Milliken and Transcontinental Oil Company whereby Milliken allegedly assigned to the Transcontinental company his claim against Meyer and after such finding the court gave judgment in favor of Milliken and against Meyer on that claim.

In their answers the petitioners allege that the Wyoming court had jurisdiction over Meyer because he was domiciled in Wyoming (R. 103) and under applicable and constitutional Wyoming statutes was personally served with process in Colorado (R. 104-105). It is further asserted that the Wyoming judgment is not void because of irregularities or inconsistencies and under Section 1, Article IV of the United States Constitution it must be given full faith and credit in the Colorado court (R. 109).

Consideration must be first given to the Wyoming judgment. Petitioner W. B. Milliken brought suit in the district court of Carbon County, Wyoming, on July 26, 1927 (R. 6) against R. D. Meyer and Transcontinental Oil Company alleging conspiracy and fraud to deprive him of his rights under a joint adventure agreement relating to certain oil lands (R. 7). The Transcontinental Company filed its answer (R. 16). Defendant Meyer was personally served with summons in Denver, Colorado, on March 30, 1928 (R. 14-15).

The applicable Wyoming statutes (now Wyoming R. S. 1931, Sections 89-817, 89-822) provide (R. 11-14):

> Sec. 5636, Wyoming Compiled Statutes, 1920—"Service by Publication."
>
> "Service by publication may be had in either of the following cases:
>
> * * * * *
>
> 6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent."
>
> Sec. 5641, Wyoming Compiled Statutes, 1920—"Personal Service Out of State."
>
> "In all cases where service may be made by publication under the provisions of this chapter, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons."

C. R. Ellery, attorney for Milliken, filed in the case his "Affidavit for Constructive Service" (R. 9) stating that Meyer was a resident of Wyoming, living a part of the time in Denver, Colorado, and a part of the time at Fort Steele, Carbon County, Wyoming, although defendant as aforesaid was and for many years had been a resident of said Fort Steele, Carbon County, Wyoming, and that since the filing of the action (R. 9):

> "* * * said defendant has remained out of the state of Wyoming, and has concealed himself, and now conceals himself to avoid the service of the summons issued out of the above named court in this cause, and since the filing of this suit, said defendant has and he does now so conceal himself that such process cannot be served upon him."

Meyer, upon the advice of his attorney (R. 54), made no appearance in the case. However, he testified as a witness as his deposition was taken by the plaintiff (R. 137-138).

The default of Meyer was entered and, after trial of the case without a jury, the court, in a decree dated July 11, 1931 (R. 32), specifically found that there was no joint adventure agreement between Milliken and the Transcontinental Company; that certain agreements dated May 3, 1924, executed by Milliken and the Transcontinental Company were valid and had been performed by the Transcontinental Company; that the action against the Transcontinental Company should be dismissed with prejudice; that the action of the court under the default of Meyer was (R. 34) "without prejudice to the findings and judgment in favor of said defendant corporation;" and that "as between the plaintiff, W. B. Milliken, and the defendant, R. D. Meyer, the court finds generally in favor of the plaintiff and against the defendant" (R. 34). The court then proceeded to find that there was a joint adventure agree-

ment between Milliken and Meyer in which each (R. 35) "was entitled to share equally in any money, profits, oil and/or gas rights and interests, or other real or personal property" derived therefrom; that the Transcontinental Company had by written agreement undertaken to pay Meyer a 1/16th part of the net profits and Milliken a 1/32nd part of the net profits from the oil and gas operations on the land covered by the joint adventure agreement; that in the total of 6/64ths of the net profits to be paid by the Transcontinental Company Meyer and Milliken should share equally, i. e., each should have 3/64ths (R. 36); that Meyer had actually received 4/64ths and had failed to account to Milliken for 1/64th (R. 36); that said 1/64th with interest amounted to $30,392.88 (R. 37). Judgment was then rendered against Meyer and in favor of Milliken in the amount of $30,392.88 with interest, and Meyer was restrained from receiving, and the Transcontinental Company was enjoined from paying to Meyer, more than 3/64ths of the net profits (R. 38). The judgment was approved as to form by the attorneys for the Transcontinental Oil Company (R. 39).

The petitioners The Ohio Oil Company and Texas Production Company succeeded to the rights and obligations of Transcontinental Oil Company (R. 4, 39). Milliken assigned his entire interest in the judgment to his wife, the petitioner Margaret M. Milliken (R. 121). By August 15, 1935, The Ohio Oil Company paid to Margaret M. Milliken a total of $4,829.49 on account of the 1/64th interest adjudged by the Wyoming Court to be the property of her assignor (R. 122-123).

R. D. Meyer was at all times fully informed of the entry of the Wyoming judgment of July 11, 1931, and of the fact that The Ohio Oil Company was withholding from him the 1/64th of the net profits referred to therein (R. 98).

After the death of R. D. Meyer on August 17, 1935, the respondent was appointed administratrix with the will annexed of his estate by the probate court of the City and County of Denver, Colorado, and under a permissive order of said probate court brought the instant action on October 29, 1935 (R. 3).

The pleadings set out the facts as alleged above. The complaint alleges that the Wyoming judgment is void because "rendered by said Court without jurisdiction of the person of said deceased" and because it "does not even follow nor conform to, but contravenes the findings of the Court as set forth in said decree" (R. 55) and that the said judgment violates Sec. 6, Art. I of the Wyoming Constitution and the Fifth and Fourteenth Amendments to the United States Constitution by taking property without due process (R. 55-56).

The answer of the Millikens alleges that the Wyoming judgment is entitled to full faith and credit under the Federal Constitution and that a refusal of such full faith and credit "would constitute a violation of said Article IV, Section 1 of the Constitution of the United States, and the rights of these defendants, and each of them, thereunder" (R. 109).

Upon trial to the court without a jury certain facts were adduced in addition to those heretofore mentioned.

H. N. Woodman, a shorthand reporter, testified that he took the oral deposition of R. D. Meyer pursuant to a dedimus issued on January 28, 1931, in a case pending in Carbon County, Wyoming, wherein W. B. Milliken was plaintiff and Transcontinental Oil Company and R. D. Meyer were the defendants and that in response to a question as to whether he held his legal residence in Wyoming, Meyer stated (R. 138):

"Well, of course, that is a question that I am

not qualified to properly elucidate. I can only say, for your information, that I am a taxpayer in Carbon County, Wyoming, and that I have always had a feeling that some day I might return there and reestablish my association in Wyoming. In fact I have never voted in Denver."

Chap. 62, Session Laws of Wyoming, 1921 (see also Wyoming R. S. 1931, Sec. 91-113), provides that in connection with leases of state land preference shall be given (R. 139) "to persons who are resident citizens and taxpayers of the state * * *."

The Deputy Commissioner of Public Lands for Wyoming identified certain applications pertaining to Wyoming lands and addressed to the Commissioner of Public Lands for the State of Wyoming. These applications, as defendants' exhibits 2 to 13, inclusive, were admitted in evidence (R. 139-140, 164-165). Exhibits 5, 6, 7 and 8 are each an application for a prospector's lease and are severally dated April 6, 1927, March 16, 1928, and April 1, 1929. Each is made by R. D. Meyer, Trustee, is signed by R. D. Meyer, Trustee, and contains the statement (R. 140, 164-165):

> "I am a resident of the State of Wyoming. I am a voter and taxpayer in Carbon County, Wyoming."

Exhibit 10 is a similar application dated March 17, 1930, and contains the following (R. 140, 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 40 years."

Likewise Exhibit 11, dated April 4, 1931, contains this statement (R. 140, 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 30 years."

A similar application is Exhibit 12 which is dated April 9, 1932, and says (R. 140, 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 20 years."

On May 3, 1924, two agreements were executed by W. B. Milliken and Transcontinental Oil Company. One provided for the receipt by Milliken of 1/32nd of the net production from the Hamilton Structure (part of the oil lands covered by the joint adventure agreement between Milliken and Meyer) (R. 17, 25-26). The other was an assignment by W. B. Milliken and Carl S. Milliken to Transcontinental Oil Company of "all and singular, their right, interest, claim and demand, of every kind or nature, as against the said R. D. Meyer in any wise pertaining to" the lands covered by the joint adventure agreement, provided however that Transcontinental should not compromise or settle any such claims with Meyer without securing a full release of all claims held by Meyer against Milliken and that the Millikens could interpose the assigned claims as a defense to any claim asserted against them by Meyer (R. 27-28).

The Colorado District Court found that the Wyoming statutes relating to service were applicable and constitutional; that R. D. Meyer was legally domiciled in the State of Wyoming at the date of the commencement of the Wyoming action, at the date of the filing of the affidavit for service and at the date of the decree and judgment therein; that the Wyoming court had jurisdiction over the person of the defendant Meyer and had jurisdiction to enter the judgment; that the alleged inconsistency between the judgment and the findings could have been corrected on appeal and while they may have constituted error do not make the judgment void on its face; that the Wyoming judgment is a valid and subsisting judgment of full force and effect as to all parties concerned; and that this suit constitutes a collateral attack on the Wyoming judgment (R. 140-143).

Judgment was entered for the dismissal of the cause (R. 144).

Upon writ of error the Colorado Supreme Court reversed the judgment (R. 237). In its opinion, after reviewing the facts, that court said (R. 230):

> "* * * we need not concern ourselves with the question of whether or not the Wyoming court had jurisdiction of the parties and subject matter in the case before it, which we do not decide."

The court then held the judgment void on its face on the ground that by finding in favor of the validity of the May 3, 1924, contract between the Millikens and the Transcontinental Oil Company wherein the Millikens assigned to the Transcontinental their claims against Meyer with the provisos noted above, the Wyoming court deprived itself and Milliken of (R. 231) "any basis upon which it could predicate the judgment it later, and by the same decree, entered against Meyer." The Colorado Supreme Court said (R. 232):

> "When the Wyoming court entered a personal judgment against Meyer in favor of Milliken, whom it found had transferred and assigned his every claim against Meyer, it recorded an irreconcilable contradiction of the terms of the finding and decree, and these are so inconsistent as to result in a mere nullity, and particularly the judgment rendered in favor of Milliken and against Meyer."
>
> (R. 234). "* * * (the Wyoming judgment) is void on its face because pronounced by a court which had deprived itself of jurisdiction to enter the particular judgment against Meyer. Judgments must conform to the findings of the court in such a substantial particular."

The judgment was reversed and the cause remanded (R. 236):

> "* * * with directions to enter judgment in favor of plaintiff and against W. B. Milliken and Margaret Milliken, and each of them and the Texas Production Company and The Ohio Oil Company and each of them, for any and all monies shown to have been paid the Millikens by virtue of the Wyoming decree and that an order be entered enjoining the defendants, the Millikens, from in any way interfering with the collection by plaintiff of the proceeds from the interest herein involved or to be involved in the future."

A petition for writ of certiorari to review the judgment of the Colorado Supreme Court was denied by this Court on October 10, 1938, because of the lack of a final judgment (*Milliken et al. v. Meyer*, 305 U. S. 598, 59 S. Ct. 63).

Upon remand to the Colorado district court no additional evidence was introduced and no change was made in the pleadings. The respondent Meyer tendered a form of judgment which was rejected (R. 181, 188-190). On December 27, 1938, the district court entered final judgment specifically adjudging the Wyoming judgment to be void. We quote from the decree (R. 192):

> "It is Accordingly Considered, Ordered, Adjudged and Decreed,
>
> 1. That the judgment of the District Court of Carbon County, Wyoming, entered on July 11, 1931, in that certain action entitled W. B. Milliken, plaintiff, v. Transcontinental Oil Company, a corporation, and R. D. Meyer, defendants, the same being docket No. 2148 in said Court, is null, void and of no effect."

The judgment further required the petitioners to pay to

the respondent $5,746.17 with interest and provided that if Texas Production Company paid said amount it should have judgment against the other petitioners and that if The Ohio Oil Company paid, it should have judgment against the Millikens (R. 193). The Millikens were restrained from interfering with the collection by the respondent of 1/16th of the net profits from the oil and gas operations (R. 193-194).

The respondent then took the cause to the Colorado Supreme Court by writ of error contending that the judgment did not comply with the remittitur (R. 197). The petitioners, as permitted by the Colorado practice (Colorado Supreme Court Rule No. 32, 1935 Colorado Code of Civil Procedure, Sec. 421) filed assignments of cross error alleging that the district court erred in not giving full faith and credit to the Wyoming judgment as required by Section 1, Article IV of the Constitution of the United States (R. 199-210).

The Colorado Supreme Court on February 13, 1940, affirmed the judgment of the district court (R. 247). In referring in its opinion to the assignments of cross error, the court said (R. 246):

> "Cross assignments of error may be summarized in the principal point that we failed to give full faith and credit to the Wyoming judgment. Our disposition of that question on the former hearing was: 'In this equitable action, it is not a matter of the courts of this state being concerned about the full faith and credit of the constitutional provisions relative to judgments of a sister state, the important question being as to the effect of the judgment of a sister state—palpably void on its face—upon the rights of citizens of this state who are parties to the equitable cause of action in this state. A court of this state unquestionably has the power to enjoin the enforcement of such a foreign judgment between the citizens of

this state who are before the court in 'the state.' 101 Colo., supra, page 583. We adhere to that statement, which adherence disposes of the cross assignments."

A petition for rehearing was filed by the petitioners again raising the point that under Section 1, Article IV of the Constitution of the United States they had the right to have the Wyoming judgment given full faith and credit by the Colorado Courts (R. 247-249). Rehearing was denied on March 4, 1940 (R. 249). Certiorari was granted by this Court on June 3, 1940 (R. 256).

SPECIFICATION OF POINTS TO BE URGED.

The petitioners contend:

1. Extraterritorial service of process upon the judgment debtor who had his domicile in Wyoming was sufficient to give the Wyoming court jurisdiction to render a judgment in personam.

2. The alleged errors and irregularities, which do not affect the jurisdiction of the court, afford no justification for the failure of the Colorado courts to give full faith and credit to the Wyoming judgment.

3. The Wyoming judgment is valid and subsisting and, under Section 1, Article IV of the Constitution of the United States must be given full faith and credit in Colorado.

SUMMARY OF THE ARGUMENT.

The argument for the petitioners may be summarized as follows:

1. Full faith and credit must be given valid and subsisting judgments of courts of one state by courts of other states.

2. The Wyoming Court had jurisdiction.

a. Objections raised to jurisdiction.

b. The judgment debtor had his domicile in Wyoming.

c. The Wyoming statutes authorize extraterritorial service of process on residents of the state in actions in personam.

d. A judgment in personam based upon extraterritorial service of process on an individual domiciled within the state of the court rendering the judgment is valid.

3. The Wyoming judgment may not be denied full faith and credit because of alleged errors and irregularities not concerning the jurisdiction of the court.

a. Jurisdiction having attached, a judgment may not be impeached by a mere showing of errors and irregularities.

b. The nature of the alleged errors and irregularities.

c. A judgment may not be impeached in a collateral attack because of errors and irregularities not affecting the jurisdiction of the court.

ARGUMENT.

I.

FULL FAITH AND CREDIT MUST BE GIVEN VALID AND SUBSISTING JUDGMENTS OF COURTS OF ONE STATE BY COURTS OF OTHER STATES.

The petitioners contend that the Wyoming judgment is valid and subsisting and accordingly must be given full faith and credit by the Colorado courts.

It is well settled by repeated decisions of this Court that the full faith and credit clause of the constitution requires that the judgment of a state court which had jurisdic-

tion of the parties and the subject matter in the suit shall be given, in the courts of every other state, the same credit, validity and effect which it has in the state where it was rendered and be equally conclusive on the merits. (*Roche v. McDonald*, 275 U. S. 449, 451, 48 S. Ct. 142, 143; *Adam v. Saenger*, 303 U. S. 59, 62, 58 S. Ct. 454, 456; *Titus v. Wallick*, 306 U. S. 282, 291, 59 S. Ct. 557, 562).

In her brief in opposition to the petition for certiorari the respondent raised the point that the record does not contain an authenticated or duly attested copy of the judgment or record of the Wyoming court. R. S. 905 (28 USCA 687) merely provides a mode of proving the judicial proceedings of a state court (*South Ottawa v. Perkins*, 4 Otto 260, 271, 24 L. Ed. 154, 159). In the instant case the respondent pleaded the Wyoming judgment (R. 32-39). Hence there was no need for the petitioners to offer in proof an authenticated copy thereof. Moreover this action was brought by the respondent to avoid the Wyoming judgment. It is not an action to enforce that judgment. Whatever disability results from the failure to introduce in evidence an authenticated copy of the Wyoming judgment affects the respondent's cause of action, not the petitioners' defense thereto.

It is well settled that notwithstanding the full faith and credit provision of the United States Constitution it may be shown in a collateral proceeding that the court in any state which renders a judgment did not have jurisdiction. (*Grover and Baker S. M. Co. v. Radcliffe*, 137 U. S. 287, 294, 11 S. Ct. 92, 94). Consequently it becomes necessary to consider whether or not the Wyoming judgment is void because of lack of jurisdiction.

II.

THE WYOMING COURT HAD JURISDICTION.

a. Objections raised to jurisdiction.

The respondent in her complaint has contended that the Wyoming Court did not have jurisdiction to render the judgment in question because process was served upon her testate in the State of Colorado. She does not question the jurisdiction of the Wyoming court over the subject matter. The judgment complained of was entered by the district court of Carbon County, Wyoming (R. 6, 32-39). By Article V, Section 10, Wyoming Constitution, the Wyoming district courts are established as courts of general jurisdiction. A court of general jurisdiction is presumed to have jurisdiction over the subject matter and the parties unless disproved by extrinsic evidence or the record itself (*Adam v. Saenger*, 303 U. S. 59, 62, 58 S. Ct. 454, 456).

b. The judgment debtor had his domicile in Wyoming.

R. D. Meyer, respondent's testate against whom the Wyoming judgment was entered, had his domicile within the state of Wyoming at the time of the filing of the suit (July 26, 1927, R. 6), the service of the summons (March 30, 1928, R. 14) and the entry of the judgment (July 11, 1931, R. 32-39). This conclusively appears from lease applications made by Meyer to the Commissioner of Public Lands of the state of Wyoming. Under the Wyoming law preferences shall be given in connection with oil and gas prospectors' leases "to persons who are resident citizens and taxpayers of the state * * *" (R. 139, Chap. 62, Session Laws of Wyoming, 1921, Wyoming R. S. 1931, Sec. 91-113).

The Deputy Commissioner of Public Lands for Wyoming identified defendant's Exhibits 2 to 13 as applications for leases addressed to the Commissioner of Public Lands for the state of Wyoming made at various dates from No-

vember 10, 1920, to April 9, 1932, for the leasing of mineral lands within that state (R. 139, 140, 164, 165). In each of these Meyer stated that he was a resident and taxpayer of Wyoming. For an example, Exhibit 7 dated March 16, 1928, contained the following statement (R. 164):

> "I am a resident of the State of Wyoming, I am a voter and taxpayer in Carbon County, Wyoming."

Likewise, Exhibit 12, dated April 9, 1932, contained the following statement (R. 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 20 years."

A shorthand reporter testified that he took a deposition on oral interrogatories pursuant to a dedimus issued out of the Wyoming court on January 28, 1931, and that in response to the question as to whether he held his legal residence in Wyoming Mr. Meyer stated (R. 138):

> "Well, of course, that is a question that I am not qualified to properly elucidate. I can only say for your information that I am a taxpayer in Carbon County, Wyoming, and that I have always had a feeling that some day I might return there and reestablish my association in Wyoming. In fact I have never voted in Denver."

The respondent has offered no evidence whatsoever to disprove petitioners' assertion that Meyer had his domicile in the state of Wyoming.

At the conclusion of the first trial herein the district court found that R. D. Meyer was legally domiciled in the state of Wyoming at the date of the commencement of the action and at the date of the decree and judgment (R. 141). This finding has never been set aside.

c. The Wyoming statutes authorize extraterritorial service of process on residents of the state in actions in personam.

The pertinent statutes are Section 5636 Wyoming Compiled Statutes 1920 (now Wyoming R. S. 1931, Sec. 89-817) and Section 5641 Wyoming Compiled Statutes 1920 (now Wyoming R. S. 1931, Sec. 89-822). These statutes are set out in full in Appendix A to this brief and may be found in the Record at pages 11-14.

Section 5641 particularly authorizes extraterritorial service and reads as follows (R. 14):

> "Personal service out of state. In all cases where service may be made by publication under the provisions of this chapter, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons."

Service by publication is covered by Section 5636, the pertinent provisions of which are these (R. 11-13):

> "Service by Publication. Service by publication may be had in either of the following cases:
>
> * * * * *
>
> 6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent."

It is noteworthy that this subdivision 6 of Section 5636

refers generally to "actions" and does not confine its application to actions in rem. Other subdivisions of this section do refer specifically to actions in rem (see Appendix A), but they have no bearing on the case under consideration. Indeed there is nothing in the statutes of Wyoming or decisions of the Wyoming courts which restricts or limits the applicability of subdivision 6 to actions in rem. The language of subdivision 6 being clear and definite, the rule applies that where the words are plain there is no room for construction (*Osaka Shosen Kaisha Line v. U. S.*, 300 U. S. 98, 101, 57 S. Ct. 356, 357). To treat subdivsion 6 as if the words "in rem" appear after the word "action" would be judicial legislation.

An affidavit as required by the Wyoming practice (Wyoming R. S. 1931, Sec. 89-819) was filed by counsel for Milliken in the Wyoming action. The affidavit stated that Meyer was a resident of Wyoming and that since the filing of the action he had remained out of the state and had concealed himself so that process could not be served upon him (R. 9-10). Meyer was personally served with summons in Denver, Colorado, on March 30, 1928 (R. 14-15). He gave his deposition in the case on January 28, 1931 (R. 138). No evidence has been adduced either by Meyer in the Wyoming case or by his administratrix in this case to show that Meyer was not domiciled in Wyoming as claimed by the petitioners. Meyer entered no appearance in the Wyoming case upon advice of counsel (R. 54). He was at all times fully informed and aware of the entry of the Wyoming judgment (R. 98).

Meyer had actual notice of the pendency of the Wyoming action and full opportunity to be heard. He was not denied due process of law. By reason of his domicile in Wyoming he was subject to its laws relative to the service of process and a judgment rendered in accordance with those laws may not now be avoided by his administratrix.

d. A judgment in personam based upon the extra-territorial service of process upon an individual domiciled within the state of the court rendering the judgment is valid.

The Federal Constitution does not undertake to control the power of a state to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure gives reasonable notice and affords fair opportunity to be heard before the issues are decided (*Honeyman v. Hanan*, 302 U. S. 375, 378, 58 S. Ct. 273, 274). In the case at bar there was actual notice to the defendant Meyer and full opportunity to be heard was afforded. The question presented is solely whether the Wyoming court secured jurisdiction to render a judgment in personam against the Wyoming citizen by actual service of process upon him in Colorado.

The original conception of the foundation of jurisdiction was based upon physical power over the individual (*McDonald v. Mabee*, 243 U. S. 90, 91, 37 S. Ct. 343). In recent years there has been a marked tendency to get away from the physical power theory and to predicate jurisdiction upon consent. Jurisdiction by consent has come to be regarded as consistent with the requirements both of due process and of the principles of conflict of laws (Dodd, "Jurisdiction in Personal Actions," 23 Illinois Law Review 427). Indicative of this trend are the cases of *Hess v. Pawloski*, 274 U. S. 352, 47 S. Ct. 632, and *Wuchter v. Pizzutti*, 276 U. S. 13, 48 S. Ct. 259, which concerned state statutes providing for service of process on non-residents in suits involving injuries caused by the negligent operation of automobiles on state highways. In those cases the consent was implied from the use of the highway. Likewise consent has been implied in cases concerned with the service of process upon foreign corporations (*Lafayette Ins. Co. v. French*, 18 How. 404, 407, 15 L. Ed. 451, 452, *Mutual Re-*

serve Fund Life Assoc. v. Phelps, 190 U. S. 147, 23 S. Ct. 707, *State of Washington v. Supreme Court*, 289 U. S. 361, 364, 53 S. Ct. 624, 626). By a logical application of this doctrine the establishment of a domicile carries with it a consent to the service of process in accordance with the statutes of the state of domicile.

A person owes allégiance to the state of his domicile and submits himself to the operation of its laws (*Hunt v. Hunt*, 72 N. Y. 217, 239). The protection which the state affords to its citizens and their property imposes upon them certain duties, among which is the obligation of responding to process served in conformity with the statutes of the state. (*Huntley v. Baker*, 33 Hun. (N. Y.) 578, 580).

This view is in accord with the Restatement of the Law of Conflict of Laws wherein the rule is announced (Sec. 47) that a state has jurisdiction over a person if he is domiciled in the state although not present there and (Sec. 79) that a state can exercise through its courts jurisdiction over an individual domiciled within the state, although he is not present within the state.

The weight of American authority supports the view that domicile is a sufficient basis for jurisdiction in personam provided that a reasonable method of giving notice is employed (Dodd, supra, p. 435). The principle has been recognized in *In re Hendrickson*, 40 S. D. 211, 167 N. W. 172 (personal service without state), *Becker v. Becker*, 218 S. W. 542 (Texas Civil Appeals—personal service without state), *Hunt v. Hunt*, 72 N. Y. 217 (service on curator ad hoc), *Ory v. Bosio*, 178 La. 221, 151 So. 187 (service on curator ad hoc), *Hurlburt v. Thomas*, 55 Conn. 181 (service at usual place of abode), *Bryant v. Shute's Exec.*, 147 Ky. 268, 144 S. W. 28 (service at usual place of abode), *Huntley v. Baker*, 33 Hun. (N. Y.) 578 (service at usual place of abode), *Henderson v. Staniford*, 105 Mass. 504 (service by publication), *Bickerdike v. Allen*, 157 Ill. 95, 41

N. E. 740 (service by publication), *Harryman v. Roberts*, 52 Md. 64 (service at usual place of abode), *Sturgis v. Fay*, 16 Ind. 429 (service at usual place of abode), *Bradford v. Pugh*, 13 Ark. 33 (service at usual place of abode), *Roberts v. Roberts*, 135 Minn. 397, 161 N. W. 148 (service by publication), *Cole v. Hoeburg*, 36 Kan. 263, 13 Pac. 275 (service by publication), *Northern Aluminum Co. v. Law*, 157 Md. 641, 147 At. 715 (Canadian judgment based on personal service in United States), 3 Freeman on Judgments (5th Ed.), Sec. 1376, p. 2845, 2 Black on Judgments (2nd Ed.), Sec. 907, p. 1349, 21 R. C. L. 1269, 1292, 34 C. J. 1147, 126 A. L. R. 1474.

Contrary to the above cases are *De la Montanya v. De la Montanya*, 112 Calif. 101, 44 Pac. 345, *Raher v. Raher*, 150 Iowa 511, 129 N. W. 494, and *Moss v. Fitch*, 212 Mo. 484; 111 S. W. 475. Particular attention is directed to the dissenting opinions in the *De la Montanya* and *Raher* cases.

Our research fails to disclose any decision of this Court declaring invalid a judgment of a state court upon the ground of lack of jurisdiction because of service without the state when such service is made under an applicable statute upon an individual domiciled within the state. *Pennoyer v. Neff*, 5 Otto 714, 24 L. Ed. 565, clearly applies only to a judgment in personam entered upon service by publication against a non-resident defendant. It was not the intent of that decision to determine the right of a state to summon its citizens to respond to a personal action by service without the borders of the state. It is significant as pointed out by the annotator in 35 L. R. A. (N. S.) 297 that the head notes to that decision as printed in 24 L. Ed. 565 were prepared by Justice Fields, the author of the opinion, and restrict the rule there announced to constructive or substituted service on non-residents in actions in personam (see particularly headnote 5).

In *McDonald v. Mabee*, 243 U. S. 90, 37 S. Ct. 343, this Court held invalid a Texas judgment in personam based upon

service by publication for the reason that publication is not sufficient notice to bind a person who has left a state intending not to return. Such a situation is vastly different from that presented in the case at bar wherein the absent defendant, who was actually domiciled in Wyoming and who stated an intent to return there (R. 138), was personally served with process.

Similarly other cases decided by this Court may be distinguished from this case. In *Webster v. Reid*, 11 How. 437, 13 L. Ed. 761, the service was by publication and it does not appear whether the defendants were residents or non-residents. In *Knowles v. Logansport Gas-Light and Coke Co.*, 19 Wall. 58, 22 L. Ed. 70, the case involved non-residents. In *Earle v. McVeigh*, 1 Otto 503, 23 L. Ed. 398, service was held insufficient when the summons was left at a dwelling which had been abandoned by the family. In *Harkness v. Hyde*, 8 Otto 476, 25 L. Ed. 237, the Court ruled against the validity of a judgment entered by a court of Idaho territory upon service made upon an Indian reservation. It does not appear from the decision whether the defendant was a resident or non-resident and there was apparently no statute authorizing the service.

Domicile is a proper test of jurisdiction to enter a personal judgment. It was said by this Court in *Grover & Baker S. M. Co. v. Radcliffe*, 137 U. S. 287, 297, 11 S. Ct. 92, 95, that:

> "Publicists concur that domicile generally determines the particular territorial jurisprudence to which every individual is subjected. As correctly said by Mr. Wharton, the nationality of our citizens is that of the United States, and by the laws of the United States they are bound in all matters in which the United States are sovereign, but in other matters, their domicile is in the particular state, and that determines the applicatory territorial jurisprudence."

There is no logical reason to deny validity to process merely because an act without the borders of the state is required. The question of the right of one state to serve process upon one of its citizens in another state involves merely the relationship of the two states. Whatever objection the state in which the process is served might have cannot be taken advantage of by the individual so served. The relationship between him and the state of his domicile subjects him to service of process in conformity with the statutes of his state (Restatement of the Law of Conflict of Laws, Sec. 79).

In *Blackmer v. U. S.*, 284 U. S. 421, 52 S. Ct. 252, this Court upheld a judgment of contempt rendered against Blackmer, a citizen of the United States, for failure to respond to a subpoena served upon him in France and requiring him to appear as a witness on behalf of the United States at a criminal trial. While that case did not present the questions which arise in cases where obligations inherent in allegiance are not involved, the Court in upholding the jurisdiction of the United States over its absent citizens discussed the validity of the service of the subpoena in France and said (284 U. S. 439):

> "The question of the validity of the provision for actual service of the subpoena in a foreign country is one that arises solely between the government of the United States and the citizen. The mere giving of such notice to the citizen in the foreign country of the requirement of his government that he shall return is in no sense an invasion of any right of the foreign government and the citizen has no standing to invoke any such supposed right."

By the same reasoning the respondent has no standing to invoke protection from the extraterritorial service of process. The proceedings against her testate were in conformity with the law of the state of his domicile.

In an action in rem jurisdiction obtained by attachment of the property and service of summons by publication is valid (*Cooper v. Reynold's Lessee*, 10 Wall. 308, 19 L. Ed. 931). In *Roller v. Holly*, 176 U. S. 398, 405, 20 S. Ct. 410, 412, this Court ruled that personal service on non-residents outside of the state may be sufficient to constitute due process of law in a suit for foreclosure of a lien upon land within the state. In other words, in proceedings in rem against non-residents, service either by publication or by personal service outside of the state is valid and judgments based thereon are entitled to full faith and credit. It is submitted that there is no reason why the same rule may not be applied to judgments in personam against residents of the state.

The mere fact that the defendant was without the state at the time of service does not militate against the validity of the service. If the absence from the state of the defendant sought to be charged is sufficient to invalidate the service of process, the recognized methods of substituted service such as leaving a copy of the summons at the defendant's residence within the state are without validity. Yet such service has been impliedly upheld by this Court (*McDonald v. Mabee*, 243 U. S. 90, 92, 37 S. Ct. 343, 344, *Earle v. McVeigh*, 1 Otto 503, 508, 23 L. Ed. 398, 400). The personal service of a summons upon an individual gives him actual notice of the suit. Service by leaving a copy of the summons at the usual place of abode may or may not afford such actual notice. Surely a procedure which renders notice certain is to be preferred to one lacking in such certainty. It is submitted that there is no justification for declaring substituted service on an absent citizen valid and personal service without the state invalid.

Modern transportation, modern communication and modern jurisprudence require a modern attitude towards the service of process. As this Court said in *Wuchter v. Piz-*

zuti, 276 U. S. 13, 24, 48 S. Ct. 259, 262, after citing *McDonald v. Mabee* and other cases:

> "These cases and others indicate a general trend of authority towards sustaining the validity of service of process, if the statutory provisions in themselves indicate that there is reasonable probability that if the statutes are complied with, the defendant will receive actual notice, and that is the principle that we think should apply here."

In the case at bar the defendant received actual notice. He had his domicile in Wyoming and, during the pendency of the action there, he was taking advantage of the preferential rights given those domiciled in that state. By the acceptance of Wyoming domicile he consented to the service of civil process in accordance with Wyoming laws. A judgment based upon such service is, we say, entitled to full faith and credit.

III.

THE WYOMING JUDGMENT MAY NOT BE DENIED FULL FAITH AND CREDIT BECAUSE OF ALLEGED ERRORS AND IRREGULARITIES NOT CONCERNING THE JURISDICTION OF THE COURT.

a. Jurisdiction having attached, a judgment may not be impeached by a mere showing of errors and irregularities.

There is no claim by the respondent of fraud or collusion and no suggestion by her that her testate was prevented from interposing any defense which he might have had to the Wyoming suit. In fact there is no intimation that Meyer had any defense to the cause of action there asserted. The only point raised is that the Wyoming court erred as a matter of law in awarding judgment in favor of

Milliken on a cause of action which had been allegedly assigned to the Transcontinental Company. Attention is directed to the fact that the Transcontinental Company was a party to that suit and its attorneys specifically approved the form of judgment (R. 39).

The Colorado Supreme Court held the Wyoming judgment to be void upon the ground that it did not conform to the findings of the Court. The general rule is that when jurisdiction of an action sufficiently appears, or is satisfactorily shown, the judgment rendered therein cannot be impeached or avoided in another state on account of any alleged errors or irregularities committed by the court which rendered it and this is true although the error is such that on appeal the judgment would have been reversed. (*Cooper v. Reynolds*, 10 Wall. 308, 316, 19 L. Ed. 931, 932, *Cornett (Nash) v. Williams*, 20 Wall. 226, 250, 22 L. Ed. 254, 258).

In *Fauntleroy v. Lum*, 210 U. S. 230, 28 S. Ct. 641, this Court considered an action upon a Missouri judgment brought in a court of Mississippi. In holding that the Mississippi court should give effect to the Missouri judgment, the Court said that whether the ruling of the Missouri court was right or wrong there could be no question that the judgment was conclusive in Missouri on the validity of the cause of action. After referring to the principle that a judgment is conclusive as to all the *media concludendi* (*U. S. v. California and Oregon Land Company*, 192 U. S. 355 358, 24 S. Ct. 266, 267), the court announced the following rule (210 U. S. 237, 28 S. Ct. 643):

> "* * * it needs no authority to show that it (the Missouri judgment) can not be impeached either in or out of the state by showing that it was based upon a mistake of law."

In *Rooker v. Fidelity Trust Company*, 263 U. S. 413, 415, 44 S. Ct. 149, 150, this Court said:

> "If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified it would be an effective and conclusive adjudication."

See also *Dugas v. American Surety Company of New York*, 300 U. S. 414, 425, 57 S. Ct. 515, 519 and *U. S. v. Throckmorton*, 8 Otto 61, 65, 25 L. Ed. 93, 95.

The rule applicable here is the same as that applied in cases involving the principle of *res adjudicata*. Such rule was stated by this Court in the case of *U. S. v. Moser*, 266 U. S. 236, 242, 45 S. Ct. 66, 67, from which we quote:

> "But a fact, question or right distinctly adjudged in the original action cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or by an erroneous application of the law."

To the same effect is the rule laid down in *Reed v. Allen*, 286 U. S. 191, 201, 52 S. Ct. 532, 534, from which we quote:

> "* * * a judgment not set aside on appeal or otherwise is equally effective as an estoppel upon the points decided, whether the judgment be right or wrong."

b. The nature of the alleged errors and irregularities.

The Colorado Supreme Court held void the Wyoming judgment solely upon the ground that after the court found that Milliken had assigned to the Transcontinental Company his claim against Meyer by the agreement of May 3, 1924, it could not then enter judgment upon the claim in favor of Milliken (R. 232). It must be remembered that the assignee of the claim, Transcontinental Oil Company, was be-

fore the Wyoming court and had pleaded this contract in defense of the cause of action asserted against it by Milliken. The attorneys for the Transcontinental Company approved the form of the Wyoming judgment (R. 39). One of the petitioners herein, The Ohio Oil Company, pleaded in this cause as a third defense and as a cross complaint against the Millikens the aforesaid agreement of May 3, 1924 (R. 83). It thus appears that the assignee of Milliken was a party to the Wyoming case and did not object to the entry of the judgment against Meyer upon the assigned claim. Likewise, the successors in interest of such assignee are parties to this cause and one of them has specifically pleaded the May 3, 1924, agreement (R. 95). Meyer may not defeat the claim of Milliken by relying upon the assignment, to which he was not a party, when both the assignor and assignee are parties to the litigation and make no objection to the judgment in favor of the assignor upon the assigned claim.

There is no showing whatsoever as to the evidence which was adduced before the Wyoming court. A judgment is presumed to be valid and it must be presumed that a sufficient showing was made to satisfy the Wyoming court that Milliken was entitled to his judgment particularly when the contract of assignment was before the court and the assignee specifically approved the form of judgment entered.

No contention has been made that Meyer had any defense to the cause of action set up against him in the Wyoming suit. His administratrix may not now avoid the judgment there rendered by asserting a supposed right which exists, if at all, in an assignee of Milliken which was a party to the Wyoming case or in an assignee of that assignee which is a party to this case. In other words, all parties in interest have been present both in the Wyoming suit and in this suit.

Wyoming statutes provide full procedure for the correction of alleged irregularities or mistakes of law. The applicable statutes are appended hereto as Exhibit B (see also R. 106-108, 111). If Meyer considered the Wyoming judgment erroneous, he had full opportunity to assert his contentions and be heard. Although he lived four years after the rendition of that judgment, he made no effort to have the judgment changed. His administratrix, the present respondent, has no greater rights than he had.

c. A judgment may not be impeached in a collateral attack because of errors and irregularities not affecting the jurisdiction of the court.

This is an independent suit in a court other than that in which the judgment complained of was entered, is predicated in part on matters *dehors* the record, and seeks relief in addition to having the judgment declared invalid (R. 57-60). Hence, it is a collateral attack on the Wyoming judgment (*Murrell v. Stock Growers Nat. Bank*, 74 F. (2d) 827, 833 (C. C. A. 10)).

The Wyoming court, having jurisdiction of the parties and the subject matter, had the power to decide the question presented and its judgment therein is not open to collateral attack for alleged errors and irregularities in exercising that power (*Johnson v. Manhattan Ry. Co.*, 289 U. S. 479, 496, 53 S. Ct. 721, 727, *Marchand v. Frellsen*, 15 Otto 423, 428, 26 L. Ed. 1057, 1059).

The rule that a judgment cannot be collaterally attacked merely because it is erroneous has become an "axiom of the law" (*Owens v. Battenfield*, 33 F. (2d) 753, 757 (C. C. A. 8)). A clear expression of the rule is found in *Baltimore S. S. Company v. Phillips*, 274 U. S. 316, 325, 47 S. Ct. 600, 604):

> "A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause."

Likewise, in *Chandler v. Peketz*, 297 U. S. 609, 612, 56 S. Ct. 602, 604, this Court said:

> "Errors or procedural irregularities, if any, were subject to correction by the court itself or upon appeal but afforded no warrant for collateral attack upon the order."

The asserted errors and irregularities do not make the Wyoming judgment void on its face. It is a valid and subsisting judgment and may not be successfully impeached in this collateral proceeding.

CONCLUSION.

The Wyoming judgment debtor took no action during his lifetime to set aside the judgment. He was domiciled in that state and took advantage of the protections and preferences given by its laws. Extraterritorial service of process on him as provided by Wyoming law gave the Wyoming court jurisdiction to render a judgment in personam. That judgment may not be impeached in a suit brought by his administratrix four years after the rendition thereof upon the ground of alleged errors and irregularities not affecting jurisdiction.

The petitioners ask that the judgment of the Colorado supreme court, which failed to give full faith and credit

the Wyoming judgment, be reversed with appropriate directions.

Respectfully submitted,

JEAN S. BREITENSTEIN,
JOHN G. REID,
Attorneys for Petitioners William B. Milliken and Margaret M. Milliken.

HAROLD H. HEALY,
Attorney for Petitioner The Ohio Oil Company.

EDWARD M. FREEMAN,
Y. A. LAND,
Attorneys for Petitioner Texas Production Company.

VER, COLORADO, October 7, 1940.

APPENDIX A.

Pertinent Provisions of Statutes of Wyoming Relating to Service of Summons.

Section 5636, Wyoming Compiled Statutes 1920, now Section 89-817, Wyoming Revised Statutes 1931 (R. 11-14), provides:

Service by publication may be had in either of the following cases:

1. In actions under the first three sections of the last preceding chapter, when the defendant resides out of the state, or his residence cannot be ascertained.

2. In actions to establish or set aside a will where the defendant resides out of the state, or his residence cannot be ascertained.

3. In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when the defendant is a foreign corporation, or a non-resident of this state, or the defendant's place of residence is unknown, and in actions against a corporation incorporated under the laws of this state, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made as provided by Sec. 5631 and which has no place of doing business in this state.

4. In actions which relate to, or the subject of which is real or personal property in this state, when a defendant has or claims a lien thereon, or an actual or contingent interest therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the state, or a foreign corporation, or his place of residence cannot be ascertained.

5. In actions against executors, administrators or guardians, when the defendant has given bond as such in

this state, but at the time of the commencement of the action is a non-resident of the state, or his place of residence cannot be ascertained.

6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent.

7. When a defendant in a petition in error has no attorney of record in this state, and is a non-resident of, and absent from the same, or has left the same to avoid the service of a summons in error, or so conceals himself that such process cannot be served upon him.

8. In actions or proceedings under Chapter 371, Wyoming Compiled Statutes, or to impeach a judgment or order for fraud, or to obtain an order of satisfaction thereof, when a defendant is a non-resident of the state.

9. In suits for divorce, for alimony, to affirm or declare a marriage void, or the modification of any decree therefor entered in such suit, when the defendant is a non-resident of the state or conceals himself or herself in order to avoid service of process.

10. In all actions or proceedings which involve or relate to the waters, or right to appropriate the waters of the natural streams, springs, lakes or other collections of still water within the boundaries of the state, or which involve or relate to the priority of appropriations of such waters, including appeals from the determination of the state board of control, and in all actions or proceedings which involve or relate to the ownership of irrigating ditches situated wholly or partly within this state, when the defendant, or any of the defendants are non-residents of the state.

The three sections referred to in paragraph 1 above are the following (R. 11):

Sec. 5609, Brought Where Property is Situated When. Actions for the following causes must be brought in the county in which the subject of the action is situate, except as provided in the next two sections:

1. For the recovery of real property, or of an estate or interest therein.

2. For the partition of real property.

3. For the sale of real property under a mortgage, lien or other incumbrance or charge.

Sec. 5610. When Property is Situated in Several Counties. When property is situated in more than one county, the action may be brought in either; but in actions to recover real property this can only be done when the property is an entire tract.

Sec. 5611. Specific Performance. An action to compel the specific performance of a contract of sale of real estate may be brought in the county where the defendants, or any of them, reside.

Section 5641, Wyoming Compiled Statutes 1920, now Section 89-822, Wyoming Revised Statutes 1931 (R. 14), provides:

"In all cases where service may be made by publication under the provisions of this chapter, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons."

APPENDIX B.

Wyoming Statutes Relating to Vacation, Modification or Correction of Judgments and Decrees and the Time Within Which Such Proceedings Must be Taken.

Section 5923, Wyoming Compiled Statutes 1920, now Section 89-2301, Wyoming Revised Statutes 1931 (R. 106-108), provides:

> "A district court may vacate or modify its own judgment or order, after the term at which the same was made: * * *
>
> "(2). By a new trial granted in proceedings against defendants, constructively summoned, as provided in Sec. 89-817;
>
> "(3). For mistake, neglect or omission of the clerk, or irregularity in obtaining a judgment or order;
>
> "(4). For fraud practiced by the successful party in obtaining a judgment or order."

Section 5926, Wyoming Compiled Statutes 1920, now Section 89-2304 Wyoming Revised Statutes 1931 (R. 106-108), provides:

> "The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment order, shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action; but the motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term."

Section 5927, Wyoming Compiled Statutes 1920, now Wyoming Revised Statutes 1931, Sec. 89-2305 (R. 106-108), provides:

"The proceedings to vacate the judgment or order on the grounds specified in subdivisions four, five, six, seven, eight, nine and ten of Section 89-2301, shall be by petition, verified by affidavit setting forth the judgment or order, the grounds to vacate or modify it, and if the party applying was defendant, the defense to the action, and on such petition a summons shall issue and be served as in the commencement of an action."

Section 5932, Wyoming Compiled Statutes 1920, now Wyoming Revised Statutes 1931, Sec. 89-2310 (R. 106-108), provides:

"Proceedings to vacate or modify a judgment or order for the causes mentioned in subdivisions four, five, and seven of Section 89-2301, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto is an infant or a person of unsound mind, and in cases of such disability, within two years after the removal thereof; proceedings for the causes mentioned in subdivisions three and six of the same section shall be commenced within three years, and in subdivision nine within two years after the defendant has notice of the judgment."

Blank Page